IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 2855 OF 2006

THE DIVISIONAL CONTROLLER ... APPELLANT.

VS.

RAKESH DILIP BAGADE & ANR. ... RESPONDENTS.

MR. C.M.LOKESH FOR THE APPELLANT.

MR. SANDESH PATIL WITH MR. SAMEER S. TAMBEKAR FOR THE RESPONDENT.

Coram : S.K.Shah, J.

Date : April 10, 207.

P.C.:-

1. Heard the learned Counsel on both sides. This Appeal is admitted and taken up for final hearing.

2. This is a motor vehicle accident claim on account of injuries sustained by the Respondent No.1. Trial Court held the driver of the appellant to be negligent to the accident, to the extent of 50%. That finding is correct, though the driver of the scooter on which the Respondent No. 1 was pillion rider, was overtaking another motorcycle, as there was sufficient space available for the S.T. Driver to take the vehicle to the left side and avoid the accident and, therefore, he was responsible for the accident, to the extent of 50% .

3. The amount calculated by the Trial Court is 30100/- towards the medical expenses in respect of

which the bills are produced. So there could be no dispute about the said amount.

4. The Trial Court has given compensation of Rs. 10,000/- for the proposed medical expenses for removal of nail on the basis of certificate issued by Dr. Abhyankar, about which also there is no dispute.

5. On account of permanent disablement, the Trial Court had held that the salary drawn by the injured was Rs. 2000/- per month. Permanent disability which is taken by the Trial Court is 11%. However, taking into consideration the nature of injury, it should be 10% and therefore the monthly loss of earning could be Rs. 200/- and annual loss of earning could be Rs. 2400/- and multiplying the same by 16 years, considering the age of the injured, the amount which the appellant is entitled on account of disability will come to Rs. 38,400. Thus the total amount of compensation which the injured is entitled to, would come to Rs. 78,500/- [Rs. 38400+30100+10000].

6. The liability of the appellant to the extent of 50% for the said accident would be Rs. 39250/-. However, the Trial Court Ordered for Rs. 45,000/-, which is on high side and, therefore, incorrect. Hence, the Order ;-

ORDER

(1) The Appeal is partly allowed.

(2) The appellant and Respondent No. 2- K.S.R.T.C., jointly and severally, shall pay to the injured Rs. 39250/- together with interest @ 7.5 % per annum on the amount of Rs. 34250/- [Rs.39250/- minus Rs. 5000/- being the future expenses at 50% for removal of nail] from the date of the petition, till the realisation of the said amount.

. At this stage the learned Counsel for the appellant states that he has deposited Rs. 25000/- in this Appeal and the entire amount of compensation awarded by the Trial Court, in the Trial Court and the amount of Rs. 25000/- deposited in this Appeal be transferred to the Trial Court.

(3) The injured Respondent would be entitled to the amount as aforesaid, from the amount which the appellant has deposited. If any amount is in excess left that shall be refunded to the Corporation- Appellant.

(4) The appeal is disposed of accordingly.

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[S.K.Shah , J.]